

AMENDED IN ASSEMBLY SEPTEMBER 7, 1999

AMENDED IN ASSEMBLY SEPTEMBER 3, 1999

AMENDED IN ASSEMBLY JULY 12, 1999

AMENDED IN SENATE JUNE 2, 1999

AMENDED IN SENATE APRIL 27, 1999

AMENDED IN SENATE APRIL 6, 1999

## **SENATE BILL**

**No. 460**

**Introduced by Senator Hayden**

February 17, 1999

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An act to amend Sections 2671, 2675, 2675.5, and 2679 of, and to add Sections 1174.2, 2671.5, 2673.1, ~~2674.3~~, and 2679.1 to, the Labor Code, relating to employers.

### LEGISLATIVE COUNSEL'S DIGEST

SB 460, as amended, Hayden. Employee wages.

Existing law requires employers to keep payroll records showing the hours worked and the wages paid to employees and to provide itemized statements to employees at the time of payment of wages.

This bill would create a rebuttable presumption in an action for the nonpayment of wages that if an employer fails to keep required payroll records or fails to provide required wage deduction statements, an employee's claim of hours worked would be valid.

Existing law requires persons carrying out garment manufacturing to register with the Labor Commissioner and to pay specified registration fees.

This bill would require that apparel procured by the state for its use be produced by registered contractors and registered manufacturers if it is manufactured in California. The bill would require the commissioner to convene a task force to determine if any public funds are expended for procurement or purchase of textiles or apparel used by state or local government that are produced in sweatshops, as defined, and would require a report to the Legislature on or before September 1, 2000. The bill would require a person to register with the commissioner if the person sells or purchases for resale finished wearing apparel carrying a specified private label or if the seller or purchaser requires or provides the specifications for manufacturing or design of the wearing apparel. ~~The bill would increase the initial registration fee from \$150 to \$300 and would increase the renewal registration fee from \$100 to \$200, unless the commissioner requires a higher fee. The bill would require the commissioner to determine the level of resources needed for enforcement of laws in the garment industry and would authorize the commissioner to adopt a fee schedule for the years 2000 to 2003, inclusive, with a minimum fee of \$300 and a maximum fee of \$2,500.~~

~~Existing law authorizes the commissioner to require a person registering as a garment manufacturer to post a surety bond not exceeding \$5,000 if the person has been cited and penalized during the preceding 3 years.~~

~~This bill would instead require the commissioner to require a surety bond of \$7,500, except that a surety bond of \$10,000 would be required if the person has one or more federal or state labor law violations and a surety bond of \$20,000 would be required if the person has multiple violations, as defined, except that any person engaged in garment manufacturing and registered with the commissioner as of January 1, 2000, would be exempt from the surety bond requirement, as specified. The bill would authorize the commissioner to exempt an employer from the surety bond requirement under specified conditions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1174.2 is added to the Labor  
2 Code, to read:

3 1174.2. In any action brought for the nonpayment of  
4 wages, there is a rebuttable presumption affecting the  
5 burden of proof that an employee's claim of hours worked  
6 is valid if the employer fails to keep accurate and  
7 contemporaneous records pursuant to subdivision (d) of  
8 Section 1174 or Section 2673 or fails to provide itemized  
9 wage deduction statements pursuant to Section 226.

10 SEC. 2. Section 2671 of the Labor Code is amended to  
11 read:

12 2671. As used in this part:

13 (a) "Person" means any individual, partnership,  
14 corporation, limited liability company, or association, and  
15 includes, but is not limited to, textile producers engaged  
16 in garment manufacturing, employers, manufacturers,  
17 jobbers, wholesalers, contractors, and subcontractors.

18 "Person" does not include any person who  
19 manufactures garments by himself or herself, without the  
20 assistance of a contractor, employee, or others; any person  
21 who engages solely in that part of the business engaged  
22 solely in cleaning, alteration, or tailoring; any person who  
23 engages in the activities herein regulated as an employee  
24 with wages as his or her sole compensation; or any person  
25 as provided by regulation.

26 (b) "Garment manufacturing" means sewing, cutting,  
27 making, processing, repairing, finishing, assembling, or  
28 otherwise preparing any garment or any article of  
29 wearing apparel or accessories designed or intended to be  
30 worn by any individual, including, but not limited to,  
31 clothing, hats, gloves, handbags, hosiery, ties, scarfs, and  
32 belts, for sale or resale by any person or any persons  
33 contracting to have the above operations performed.  
34 Garment manufacturing includes the sale or purchase for  
35 resale of any finished wearing apparel carrying a private

1 label, owned in whole or part, or licensed to the seller or  
2 the purchaser, or where the specifications for  
3 manufacturing or design of the wearing apparel are  
4 required or provided by the seller or the purchaser.

5 (c) “Commissioner” means the Labor Commissioner.

6 (d) “Sweatshop” means a factory or homework  
7 operation that violates more than one federal or state  
8 labor law, including, but not limited to, laws governing  
9 the minimum wage and overtime, child labor, industrial  
10 homework, occupational safety and health, workers’  
11 compensation, or industry registration.

12 SEC. 3. Section 2671.5 is added to the Labor Code, to  
13 read:

14 2671.5. (a) It is the intent of the Legislature that  
15 California set an example in the elimination of sweatshops  
16 through its public policies, including state procurement  
17 policies. The state’s goal should be to avoid purchasing,  
18 leasing, renting, contracting for, or taking on  
19 consignment goods or services produced under  
20 sweatshop conditions.

21 (b) Any apparel procured by the state for its own use  
22 or that of its employees, and that is manufactured in  
23 California, shall be required to be produced by registered  
24 contractors and registered manufacturers. The state may  
25 not procure apparel for its own use, or that of its  
26 employees, that is manufactured within California by  
27 unregistered contractors or unregistered manufacturers.

28 (c) The commissioner shall convene a broad-based  
29 task force to determine whether any public funds are  
30 expended for the procurement or purchase of textiles,  
31 apparel, or other products used by state or local  
32 government that are produced in sweatshops in  
33 California or elsewhere.

34 (d) The task force shall be composed of procurement  
35 officials of state and local agencies and advocates and  
36 experts on the issue of sweatshop labor.

37 (e) Based on the task force’s consideration, the  
38 commissioner shall determine whether bidders on state  
39 contracts should make specific disclosures of  
40 subcontractors and sites, and make commitments to

1 eliminate sweatshop conditions in their workplaces  
2 regardless of the place of manufacturing, whether in  
3 California or elsewhere.

4 (f) The commissioner shall report the findings of the  
5 task force to the Legislature no later than September 1,  
6 2000, and make a preliminary report no later than May 1,  
7 2000.

8 SEC. 4. Section 2673.1 is added to the Labor Code, to  
9 read:

10 2673.1. (a) Thousands of California workers continue  
11 to work in sweatshop conditions where violations of labor  
12 and health and safety laws are rampant, and enforcement  
13 of the law has been minimal.

14 (b) Many of these workers are from families of  
15 undocumented immigrants who lack many of the  
16 protections of a democratic society.

17 (c) The underclass culture perpetuated by these  
18 conditions creates immense social costs for health care,  
19 other social services, and law enforcement.

20 (d) The existence of sweatshops creates an unfair  
21 competitive advantage over small businesses that obey  
22 existing labor and health and safety laws.

23 (e) The existence of sweatshops in an affluent society  
24 is unjust and immoral and a blight on the broader quality  
25 of life.

26 (f) Improved working conditions for low-wage  
27 workers in sweatshops would lead to economic  
28 betterment for their families, greater consumer spending  
29 in the inner city, and a greater atmosphere of hope rather  
30 than despair.

31 ~~SEC. 5. Section 2674.3 is added to the Labor Code, to~~  
32 ~~read:~~

33 ~~2674.3. (a) On or before March 1, 2000, the~~  
34 ~~commissioner shall determine an adequate level of~~  
35 ~~resources needed for vigorous enforcement in the~~  
36 ~~California garment industry of federal and state labor~~  
37 ~~laws governing the minimum wage and overtime, child~~  
38 ~~labor, occupational safety and health, workers'~~  
39 ~~compensation, and industry registration, and for handling~~

1 ~~claims filed under the wage guarantee pursuant to~~  
2 ~~Section 2679.2 in a timely manner.~~

3 ~~(b) For years 2000 to 2003, inclusive, the commissioner~~  
4 ~~may adopt a schedule for the registration fee to meet the~~  
5 ~~amount of resources determined in subdivision (a). The~~  
6 ~~fee schedule shall be a sliding scale based on annual gross~~  
7 ~~volume of business of the person engaged in garment~~  
8 ~~manufacturing. The minimum fee shall be no less than~~  
9 ~~three hundred dollars (\$300) and the maximum fee shall~~  
10 ~~be no more than two thousand five hundred dollars~~  
11 ~~(\$2,500).~~

12 ~~SEC. 6.—~~

13 *SEC. 5.* Section 2675 of the Labor Code is amended to  
14 read:

15 2675. (a) For purposes of enforcing this part and  
16 Sections 204, 209, 212, 221, 222, 222.5, 223, 226, 227, and  
17 227.5, Chapter 2 (commencing with Section 300) and  
18 Article 2 (commencing with Section 400) of Chapter 3 of  
19 Part 1 of this division, Sections 1195.5, 1197, 1197.5, and  
20 1198, Division 4 (commencing with Section 3200), and  
21 Division 4.7 (commencing with Section 6200), every  
22 person engaged in the business of garment  
23 manufacturing shall register with the commissioner.

24 The commissioner shall not permit any person to  
25 register, nor shall the commissioner allow any person to  
26 renew registration, until all the following conditions are  
27 satisfied:

28 (1) The person has executed a written application  
29 therefor in a form prescribed by the commissioner,  
30 subscribed and sworn by the person, and containing:

31 (A) A statement by the person of all facts required by  
32 the commissioner concerning the applicant's character,  
33 competency, responsibility, and the manner and method  
34 by which the person proposes to engage in the business  
35 of garment manufacturing if the registration is issued.

36 (B) The names and addresses of all persons, except  
37 bona fide employees on stated salaries, financially  
38 interested, either as partners, associates, or profit sharers,  
39 in the proposed business of garment manufacturing  
40 together with the amount of their respective interests,

1 except that in the case of a publicly traded corporation a  
2 listing of principal officers shall suffice.

3 (2) The commissioner, after investigation, is satisfied  
4 as to the character, competency, and responsibility of the  
5 person.

6 ~~(3) The person has deposited with the commissioner~~  
7 ~~a surety bond in the following amount:~~

8 ~~(A) A seven thousand five hundred dollar (\$7,500)~~  
9 ~~wage bond, except as provided under subparagraph (B),~~  
10 ~~(C), (D), or (E).~~

11 ~~(B) A ten thousand dollar (\$10,000) wage bond if the~~  
12 ~~person has violated one or more federal or state labor laws~~  
13 ~~governing the minimum wage and overtime, child labor,~~  
14 ~~occupational safety and health, workers' compensation,~~  
15 ~~or industry registration, or has been subject to one final~~  
16 ~~judgment for failure to pay wages that are due to his or~~  
17 ~~her employees.~~

18 ~~(C) A twenty thousand dollar (\$20,000) wage bond if~~  
19 ~~the person has multiple violations of federal or state labor~~  
20 ~~laws governing the minimum wage and overtime, child~~  
21 ~~labor, occupational safety and health, workers'~~  
22 ~~compensation, or industry registration, or has been~~  
23 ~~subject to more than one final judgment for unpaid wages~~  
24 ~~in a three-year period. "Multiple violations," as used in~~  
25 ~~this subparagraph, means one or more violations for three~~  
26 ~~consecutive years or three or more violations in a~~  
27 ~~three-year period.~~

28 ~~(D) Any person engaged in garment manufacturing~~  
29 ~~and registered with the commissioner as of January 1,~~  
30 ~~2000, who has complied with all applicable federal and~~  
31 ~~state labor laws, including, but not limited to, laws~~  
32 ~~governing the minimum wage and overtime, child labor,~~  
33 ~~occupational health and safety, workers' compensation,~~  
34 ~~and industry registration, is exempt from the surety bond~~  
35 ~~requirement pursuant to this subdivision.~~

36 ~~(E) The commissioner may exempt an employer from~~  
37 ~~the surety bond requirement of this paragraph if no wage~~  
38 ~~and hour violation has been filed against the employer~~  
39 ~~within the prior five years and no final judgment has been~~

1 rendered against the employer relating to improper  
2 payment of wages within the prior five years.

3 ~~(F) The bond shall be payable to the people of~~  
4 ~~California and shall be for the benefit of any employee of~~  
5 ~~a registrant damaged by the registrant's failure to pay~~  
6 ~~wages and fringe benefits, or for the benefit of any~~  
7 ~~employee of a registrant damaged by a violation of~~  
8 ~~Section 2677.5. If the initial bond under this paragraph is~~  
9 ~~exhausted, an additional bond shall be required in the~~  
10 ~~same amount.~~

11 *(3) In the case of a person who has been cited and*  
12 *penalized within the prior three years under this part, the*  
13 *person has deposited or has on file a surety bond in the*  
14 *sum and form that the commissioner deems sufficient and*  
15 *adequate to insure future compliance, not to exceed five*  
16 *thousand dollars (\$5,000). The bond shall be payable to*  
17 *the people of California and shall be for the benefit of any*  
18 *employee of a registrant damaged by the registrant's*  
19 *failure to pay wages and fringe benefits, or for the benefit*  
20 *of any employee of a registrant damaged by a violation of*  
21 *Section 2677.5.*

22 (4) The person has documented that a current  
23 workers' compensation insurance policy is in effect for  
24 the employees of the person seeking registration.

25 (5) Unless the commissioner requires a higher  
26 registration fee pursuant to Section 2674.3, the person has  
27 paid an initial registration fee to the commissioner not to  
28 exceed three hundred dollars (\$300), or in the case of  
29 renewal of registration, a fee not to exceed two hundred  
30 dollars (\$200).

31 (b) At the time a certificate of registration is originally  
32 issued or renewed, the commissioner shall provide  
33 related and supplemental information regarding business  
34 administration and applicable labor laws. This related and  
35 supplemental information, as much as reasonably  
36 possible, shall be provided in the primary language of the  
37 garment manufacturer. The information shall include all  
38 subject matter on which persons seeking registration are  
39 examined pursuant to subdivision (c), and shall be



1 available to persons seeking registration prior to taking  
2 this examination.

3 (c) Effective January 1, 1991, persons seeking  
4 registration under this section for the first time, and  
5 persons seeking to renew their registration pursuant to  
6 subdivision (f), shall comply with all of the following  
7 requirements:

8 (1) Demonstrate, by an oral or written examination, or  
9 both, knowledge of the pertinent laws and administrative  
10 regulations concerning garment manufacturing as the  
11 commissioner deems necessary for the safety and  
12 protection of garment workers.

13 (2) Demonstrate, by an oral or written examination, or  
14 both, knowledge of state laws and regulations relating to  
15 occupational safety and health which shall include, but  
16 not be limited to, the following:

17 (A) Section 3203 of Title 8 of the California Code of  
18 Regulations (Injury Prevention Program).

19 (B) Section 3220 of Title 8 of the California Code of  
20 Regulations (Emergency Action Plan).

21 (C) Section 3221 of Title 8 of the California Code of  
22 Regulations (Fire Prevention Plan).

23 (D) Section 6151 of Title 8 of the California Code of  
24 Regulations which provides for the placement, use,  
25 maintenance, and testing of portable fire extinguishers  
26 provided for the use of employees.

27 (3) Sign a statement which provides that he or she  
28 shall do all of the following:

29 (A) Comply with those regulations specified in  
30 paragraph (2) which establish minimum standards for  
31 securing safety in all places of employment.

32 (B) Ensure that all employees are made aware of the  
33 existence of these regulations and any other applicable  
34 laws and are instructed in how to implement the Injury  
35 Prevention Program, Emergency Action Plan, and Fire  
36 Prevention Plan, specified in paragraph (2), in the  
37 workplace.

38 (C) Ensure that all employees are instructed in the use  
39 of portable fire extinguishers.

1 (D) Post the Injury Prevention Program, Emergency  
2 Action Plan, and Fire Prevention Plan, specified in  
3 paragraph (2), in a prominent location in the workplace.

4 (d) The Division of Occupational Safety and Health  
5 shall assist the Division of Labor Standards Enforcement  
6 in developing the examination which shall include, but  
7 not be limited to, the state's occupational safety and  
8 health laws specified in paragraph (2) of subdivision (c).

9 (e) The commissioner shall charge a fee to persons  
10 taking the examinations required by subdivision (c)  
11 which is sufficient to pay for costs incurred in  
12 administering the examinations.

13 (f) A person seeking renewal of registration shall be  
14 required to take both of the examinations, and sign the  
15 statement, specified in subdivision (c). However, once a  
16 renewal of registration has been granted based on these  
17 examinations, subsequent examinations shall only be  
18 required at the discretion of the commissioner if, in the  
19 preceding year, the registrant has been found to be in  
20 violation of subdivision (a) or any of the sections  
21 enumerated in that subdivision.

22 (g) Proof of registration shall be by an official Division  
23 of Labor Standards Enforcement registration form.  
24 Every person, as set forth in Section 2671, shall post the  
25 registration form where it may be read by employees  
26 during the workday.

27 (h) At least 90 days prior to the expiration of each  
28 registrant's registration, the Labor Commissioner shall  
29 mail a renewal notice to the last known address of the  
30 registrant. The notice shall include all necessary  
31 application forms and complete instructions for  
32 registration renewal. However, omission of the Labor  
33 Commissioner to provide notice in accordance with this  
34 subdivision shall not excuse a registrant from making  
35 timely application for renewal of registration, shall not be  
36 a defense in any action or proceeding involving failure to  
37 renew registration, and shall not subject the Labor  
38 Commissioner to any legal liability under this section.

39 ~~SEC. 7.—~~

1     *SEC. 6.* Section 2675.5 of the Labor Code is amended  
2 to read:

3     2675.5. (a) The commissioner shall deposit  
4 seventy-five dollars (\$75) of each registrant's annual  
5 registration fee, required pursuant to paragraph (5) of  
6 subdivision (a) of Section 2675, into one separate account.  
7 Funds from the separate account shall be disbursed by the  
8 commissioner only to persons determined by the  
9 commissioner to have been damaged by the failure to pay  
10 wages and benefits by a person who is required to register  
11 under this chapter. Any disbursed funds subsequently  
12 recovered by the commissioner shall be returned to the  
13 separate account.

14     (b) The remainder of each registrant's annual  
15 registration fee not deposited into the special account  
16 pursuant to subdivision (a) shall be applied to costs  
17 incurred by the commissioner in administering Section  
18 2675 and this section.

19     ~~SEC. 8.—~~

20     *SEC. 7.* Section 2679 of the Labor Code is amended to  
21 read:

22     2679. (a) The commissioner, in addition to any civil  
23 penalty imposed pursuant to Section 2678, may require  
24 that as a condition of continued registration, the  
25 employer deposit with him or her within 10 days a bond  
26 to ensure payment of wages and benefits in the sum and  
27 form as the commissioner may deem sufficient and  
28 adequate in the circumstances but not to exceed ten  
29 thousand dollars (\$10,000). The bond shall be payable to  
30 the commissioner and shall provide that the employer  
31 shall pay his or her employees in accordance with Section  
32 2675. In lieu of the deposit of a bond, the commissioner,  
33 in his or her discretion, may accept other evidence of  
34 financial security sufficient to guarantee payment of  
35 wages to affected employees.

36     (b) The commissioner, in addition to any civil penalty  
37 imposed, shall require a bond as set forth in subdivision  
38 (a) upon any second or subsequent violation within any  
39 two-year period. The commissioner may revoke the  
40 registration of any person for any period ranging from 30

1 days to one year upon a third or subsequent violation  
2 within any two-year period and may confiscate any  
3 garment or wearing apparel, assembled or partially  
4 assembled, if the violation relates to minimum wages,  
5 child labor, or maximum hours of labor. If the  
6 commissioner does exercise the authority to confiscate  
7 upon such a third or subsequent violation, the  
8 commissioner shall notify persons for whom assembly is  
9 performed and shall provide for the return of the  
10 garment owner's confiscated garments or wearing  
11 apparel upon the assumption and satisfaction of liability  
12 for the violation.

13 ~~SEC. 9.—~~

14 *SEC. 8.* Section 2679.1 is added to the Labor Code, to  
15 read:

16 2679.1. It is the intent of the Legislature to assure  
17 garment workers full payment of back wages owed them  
18 for work performed. Additionally, the Legislature affirms  
19 the right of garment workers to bring civil actions for  
20 back wages.

